



# COMMONWEALTH of VIRGINIA

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December 21, 2016

The Honorable Calvin C. Massie, Jr.  
Campbell County Commissioner of the Revenue  
Post Office Box 66  
Rustburg, Virginia 24588

Dear Mr. Massie:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether public utilities are exempt from providing information requested pursuant to § 58.1-3109(6) of the *Code of Virginia* by a Commissioner of the Revenue pertaining to contractors that may be subject to a local business license ordinance. You further ask whether public utility personnel are exempt from being summoned by a Commissioner of the Revenue in accordance with § 58.1-3110(A) for the purpose of answering, under oath, questions about contractors that may be subject to a local business license ordinance.

## Applicable Law and Discussion

Commissioners of the Revenue are constitutional officers elected by citizens within the locality that they serve.<sup>1</sup> The *Code of Virginia* provides that they “shall exercise all the powers conferred and perform all the duties imposed . . . by general law.”<sup>2</sup> Their primary duty is to assess the fair market value of “all subjects of taxation in [the] county or city.”<sup>3</sup> In addition, they are tasked with the duty to assess

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<sup>1</sup> VA. CONST. art. VII, § 4 (“There shall be elected by the qualified voters of each county and city . . . a commissioner of revenue.”); VA. CODE ANN. § 15.2-1636 (2012) (“The voters in every county and city shall elect a commissioner of the revenue, unless otherwise provided by general law or special act.”).

<sup>2</sup> Section 15.2-1636; *see also* VA. CONST. art. VII, § 4 (providing that the duties of the Commissioner “shall be prescribed by general law or special act”); § 58.1-3103 (2013); *McGinnis v. Nelson Cty.*, 146 Va. 170, 172 (1926) (noting that the duties of commissioners “are regulated and defined by statute”).

<sup>3</sup> Section 58.1-3103.

local business, professional and occupational license taxes.<sup>4</sup> With some statutory limitations, localities may require contractors to pay local business license fees and taxes.<sup>5</sup>

As a constitutional officer, a Commissioner of the Revenue possesses complete discretion in the manner in which he administers his office and carries out his prescribed duties, unless limited by constitutional provision or statute.<sup>6</sup>

Section 58.1-3109(6) enables Commissioners of the Revenue to require “any person . . . or corporation to furnish information relating to [the] . . . license taxes of any and all taxpayers . . . .” This section further “require[s] such persons to furnish access to books of account or other papers and records for the purpose of . . . procuring the information necessary to make a complete assessment of any taxpayer’s . . . license taxes for the current tax year and the three preceding tax years.”<sup>7</sup> Contractors subject to local business license ordinances must pay local business license taxes.<sup>8</sup> Such contractors would therefore constitute “taxpayers” pursuant to § 58.1-3109(6).

As a public service corporation, the public utility referenced in your request would qualify as a “corporation” required to furnish information relating to the assessment of business license tax liability of a contractor under § 58.1-3109(6). Further, because corporations are treated as persons under the law, a public utility qualifying as a public service corporation likewise constitutes a “person” subject to this section.<sup>9</sup> Public utility personnel may additionally be deemed “persons” that are obligated to provide information requested by Commissioners of the Revenue under the statute. Accordingly, I conclude that public utilities are not exempt from providing information requested by Commissioners of the Revenue pursuant to § 58.1-3109(6) when it relates to contractors that may be subject to a local business license ordinance.

Section 58.1-3110 additionally empowers a Commissioner of the Revenue to “summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers and to produce documents relating to such

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<sup>4</sup> See § 58.1-3109 (2013). Local governing bodies “may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town . . . .” Section 58.1-3703(A) (Supp. 2016).

<sup>5</sup> Section 58.1-3715 (2013). See § 58.1-3714(D) (2013) for a definition of the term “contractor.” Contractors are generally subject to local business license ordinances of the locality in which their principal office or any branch office is located as well as any other locality in which “the amount of business done by the contractor in such county, city or town exceeds or will exceed the sum of \$25,000 for the license year.” Section 58.1-3715(B).

<sup>6</sup> 1984-1985 Op. Va. Att’y Gen. 284, 284 (noting that a commissioner possesses “general authority and discretion to organize and manage his operations”). “While the powers and duties of a constitutional officer are those prescribed by statute . . . except as limited by law, the constitutional officer is free to discharge his prescribed powers and duties in the manner in which he deems appropriate.” *Id.*

<sup>7</sup> Section 58.1-3109(6).

<sup>8</sup> Section 58.1-3700 (2013). “Whenever a license is required by ordinance . . . and whenever the local governing body shall . . . levy a license tax on any business . . . it shall be unlawful to engage in such business . . . without first obtaining the required license.” *Id.* Further, “[a]ny person who engages in a business without obtaining a required local license, or after being refused a license, shall not be relieved of the tax imposed by the ordinance.” *Id.*

<sup>9</sup> Section 1-230 (2014) (defining “person” as “any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof”).

tax liability, either or both.”<sup>10</sup> However, he “shall not . . . summon a taxpayer or other person for the tax liability of the taxpayer which is the subject of litigation.”<sup>11</sup> Public utility personnel constitute “persons” under § 58.1-3110(A). So long as the tax liability of the person summoned or the public utility is not the subject of pending litigation, a Commissioner of the Revenue may therefore summon public utility personnel to appear, answer questions under oath, and produce documents for the purpose of assessing the business license taxes of a contractor.

Your opinion request mentions that the contractor at issue may be subject to a local business license ordinance. One could argue that a contractor does not constitute a “taxpayer” over which a commissioner has authority for the purposes of §§ 58.1-3109(6) and 58.1-3110(A) unless the contractor is actually subject to a local business license ordinance and therefore liable for local business license taxes. However, § 58.1-3109(6) enables Commissioners of the Revenue to obtain “the information necessary to make a complete assessment of any taxpayer’s . . . license taxes.”<sup>12</sup> Ascertaining whether a contractor is subject to a business license ordinance is necessary in order to make a “complete assessment” of license taxes, and it is therefore within the scope of authority under the statute.

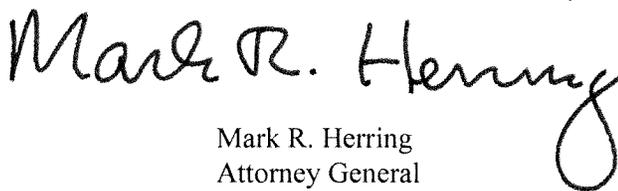
In the absence of any provision exempting public service corporations from the scope of a Commissioner of the Revenue’s authority under §§ 58.1-3109(6) and 58.1-3110(A), I conclude that Commissioners of the Revenue possess both statutory and inherent authority to obtain from public utilities and their employees information needed to determine whether a contractor is subject to a business license ordinance.<sup>13</sup>

### Conclusion

Accordingly, it is my opinion that public utilities are not exempt from providing information requested by Commissioners of the Revenue pursuant to § 58.1-3109(6) and that public utility personnel are likewise not exempt from appearing at the request of a Commissioner of the Revenue pursuant to a summons issued in accordance with § 58.1-3110(A).

With kindest regards, I am

Very truly yours,



Mark R. Herring  
Attorney General

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<sup>10</sup> Section 58.1-3110(A) (Supp. 2016).

<sup>11</sup> *Id.*

<sup>12</sup> Section 58.1-3109(6).

<sup>13</sup> A commissioner may only exercise authority under these statutes in order to assess the taxes of taxpayers within his jurisdiction. Section 58.1-3102 (2013) (“The jurisdiction, powers, and duties of commissioners do not extend beyond the bounds of their respective counties or cities.”).